IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Bail Appl..No. 3918 of 2007()

CRIME NO.359/05 OF PERINTALMANNA POLICE STATION

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PETITIONER

THIRUTHIMMATHODI HANEEFA,
S/O.DAVOOD PASHA, AGED 42 YEARS,
VALIYANGADI, PERINTALMANNA AMSOM,
MALAPPURAM DISTRICT.

BY ADV. SRI.DEVIDAS.U.K

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY SUB
INSPECTOR OF POLICE, PERINTALMANNA THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 3918 OF 2007

Dated this the 4th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations, inter alia, under Secs.452 and 376 of the IPC. The prosecutrix – a married woman aged about 18 years, was allegedly raped by the petitioner when she was sleeping in a one room accommodation allegedly along with her parents. The husband was not available in the house at the relevant time. The victim made a hue and cry. The other occupants of the room where thus woke up. They also allegedly had seen the petitioner running away from the scene of the crime. The alleged incident took place on 8/5/05 at about 3 a.m. A complaint has been lodged before the Police Station revealing all these allegations by about 11 a.m. on the same day. The petitioner was not available after the incident. He has not been arrested so far. He was allegedly absconding. He had gone abroad. He now apprehends arrest.

2. The learned counsel for the petitioner submits that

the allegations are inherently improbable. At any rate, the identification of the petitioner cannot be accepted. It is also contended that the prosecutrix has an animus against the petitioner inasmuch as complaints were raised earlier against the husband of the prosecutrix. It is, in these circumstances, prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioners.

3. The learned Public Prosecutor opposes the application. There are satisfactory materials to indicate that the allegations are true. There is absolutely no reason for the victim/the complainant to raise such allegedly improbable allegations falsely against the petitioner.

4. The Case Diary has been placed before me for my perusal. It shows that the brother of the accused had himself, when he was questioned shortly after the registration of the crime, given a version consistent with the version of the prosecutrix. His version shows that immediately after the occurrence, the parents of the victim had run to the house of the petitioner and when the brother of the petitioner confronted the petitioner with the allegation, he had no satisfactory explanation to offer. Be that as it may, I am not proceeding to express any opinion on the acceptability of the allegations or the credibility

of the data collected. Suffice it to say that I do not, in the facts and circumstances of this case, find any reason to justify the invocation of the extraordinary equitable discretion available to this Court under Sec.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. He must then seek regular bail in the ordinary course. I have no reason to assume that such application of the petitioner will not be considered on merits, in accordance with law and expeditiously by the learned Magistrate.

5. In the result, this petition is dismissed. But I may hasten to observe that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge